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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/531,304

04/14/2005

Shigeaki Ueda

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JAPAN

EXAMINER

PICKETT, JOHN G

ART UNIT

PAPER NUMBER

3728

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/531,304	<b>Applicant(s)</b> UEDA ET AL.	
	<b>Examiner</b> J. Gregory Pickett	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                        |                                                                   |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/19/07</u> .                                                | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This Office Action acknowledges the applicant's amendment of 20 November 2007 and the Supplemental Amendment filed 24 January 2008. Claims 1-4 are pending in the application.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Response to Amendment***

2. The amendments filed 20 November 2007 and 24 January 2008 are objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

There is no support in the original disclosure for the engaging plate to be rigid. Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-4 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which

was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

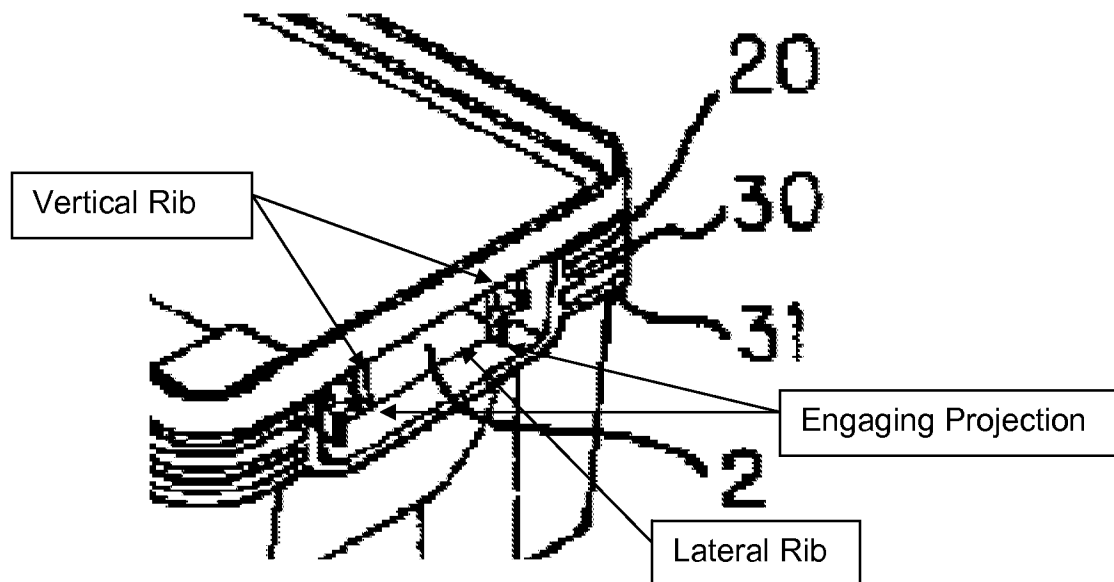
Claim 1 recites the engaging plate as being integral and rigid; there is no support in the original disclosure for a rigid engaging plate.

Claims 2-4 are dependent upon claim 1 and are rejected for the above reasons.

***Claim Rejections - 35 USC § 103***

4. Claims 1, 2, and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohori (JP 2002-110775 A; previously provided) in view of Letica (US 4,349,119) and Ejima et al (US 5,873,468; previously provided).

Claim 1: Ohori discloses a container comprising a container body 1, a container lid 2, a cassette 3, a cassette lid 8, an L-shaped flange 10, a first flange 20, and a second flange 30. Ohori further discloses a D-zone (portion with locking part 2), the D-zone having a lateral rib and two engaging projections provided on interconnecting vertical ribs (see below).



Ohori functions as claimed. Ohori lacks, or does not expressly disclose, vertical ribs between the first and second flanges, the specific distance between the first and second flanges, or the recessed D-zone.

Letica teaches vertical ribs between perimeter flanges on a plastic container to reinforce the perimeter flanges (see for example (Col. 3, lines 28-32). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the first and second flanges of Ohori with vertical ribs as taught by Letica in order to reinforce the perimeter flanges. "[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond that person's skill." KSR Int'l v. Teleflex Inc., 127 S.Ct. 1740, 82 USPQ2d 1396 (2007).

As to the recessed D-Zone, one of ordinary skill in the art, when observing Ohori, would note that the D-zone has a perimeter to distinguish it from flanges 20 and 30 (see Figure 1). Moreover, the side view of Figure 2 does not show any projecting components beyond the extent of flanges 20 and 30. In viewing these depictions, one of ordinary skill in the art would have found it beneficial and obvious to recess the D-zone (and thereby the lateral rib) in order to prevent any snagging portions extending beyond the extent of perimeter flanges 20 and 30. The drawings must be evaluated for what they reasonably disclose and suggest to one of ordinary skill in the art. *In re Aslanian*, 590 F.2d 911, 200 USPQ 500 (CCPA 1979). MPEP § 2125. It is proper to take account of the "inferences and creative steps that a person of ordinary skill in the art would employ." See *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 1727, 1731, 82 USPQ2d 1385, 1396 (2007). See also *id.* at 1742, 82 USPQ2d at 1397 ("A person of ordinary skill is also a person of ordinary creativity, not an automaton.")

With respect to the distance between the first and second flanges, it has been held that, where the only difference between the prior art and the claims is a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than a prior art device, the claimed device is not patentably distinct from the prior art device. *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984).

With respect to the engaging plate, Ohori discloses integral plate 7 for engaging with the engaging projections. Ohori discloses the plate 7 as bendable, yet Ejima

shows that a rigid engaging plate 18 was an art-recognized equivalent structure. To substitute one equivalent structure for another would have been obvious to one of ordinary skill in the art. An express suggestion to substitute one equivalent component or process for another is not necessary to render such substitution obvious. *In re Fout*, 675 F.2d 297, 213 USPQ 532 (CCPA 1982).

Claim 2: Ohori discloses a channel 11 and angled upper and lower sides of flanges 20 and 30 (see Figure 8).

Claim 4: Ohori-Letica, as applied to claim 1 above, discloses the claimed invention except for the specific spacing of the vertical ribs. It has been held that, where the only difference between the prior art and the claims is a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than a prior art device, the claimed device is not patentably distinct from the prior art device. *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984).

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohori-Letica-Ejima as applied to claim 1 above, and further in view of Johnson (US 4,520,925).

Ohori-Letica-Ejima, as applied to claim 1, discloses the claimed invention except for the turned-down lateral tabs.

Johnson teaches turned-down lateral tabs 96 & 98 for provision of a flush surface and protection against accidental opening (see for example Col. 4, lines 41-45). It

would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Ohori-Letica with lateral tabs as taught by Johnson in order to provide of a flush surface and protect against accidental opening.

### ***Response to Arguments***

6. Applicant's arguments with respect to claims 1-4 have been considered but are moot in view of the new ground(s) of rejection. Moreover, the amendment to add the rigid engaging plate is considered new matter.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Gregory Pickett/  
Primary Examiner, Art Unit 3728